

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MATTHEW W. KING and)	
ELIZABETH J. WINSLOW,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 2005-04-738
)	
LAWRENCE HOBDELL,)	
)	
Defendant.)	

Submitted: August 19, 2005
Decided: August 31, 2005

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**DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Defendant, Lawrence Hobdell (hereinafter "Hobdell") brings this motion pursuant to Court of Common Pleas Civil 12(c) for judgment on the pleadings. Defendant filed its opening brief on June 2, 2005 which alleged that he is entitled to judgment as a matter of law because the pleading when considered in its entirety failed to state a claim for which relief can be granted. Plaintiffs oppose the motion and the Court scheduled oral argument on August 19, 2005. This is the Court's decision following consideration of defendant's motion and plaintiff's response.

In this action, plaintiff Matthew King and Elizabeth Winslow (hereinafter referred to as “King and Winslow”) which involves the purchase of house from the defendant Hobdell. In their original complaint, King and Winslow bring their action asserting several theories for claim on the basis of defects which they found or discovered in the property purchased on March 26, 2004 located at 1907 North Franklin Street, Wilmington, Delaware. Plaintiffs allege that after they occupied the residence, they discovered that they were unable to use the plumbing system because of a defect and water and sewage backing up in the basement. Plaintiffs allege that as a result of this defect, they were required to retain or hire a plumber which excavated their front lawn and discovered that the drainage line which connected to the City sewage system was broken. This break in the sewage line prevented the sewage from leaving the property and thereby rendering the house uninhabitable until they expended the sum of \$5,518.00 to repair the cost and additional sums to make additional repairs. After defendant refused to compensate plaintiffs for these additional amounts, they instituted this action. King and Winslow seek recovery against Hobdell on the basis of five theories: fraudulent misrepresentation, fraudulent concealment, negligent misrepresentation, breach of contract, and breach of warranty. Defendant Hobdell moved to dismiss the complaint on the basis that the pleadings fail to support their claim of fraud because the complaint does not specify the claim of fraud with specificity as required by the rules of pleading by the Court and settled Delaware law. Secondly, defendant argues the facts fail to support the claim of negligent misrepresentation since plaintiffs’ agent was aware or had knowledge of the alleged problem. Thirdly, defendant argues that there can be no breach of contract,

because the contract merged into the deed when the parties settled on the transfer of the property.

Plaintiffs respond to the motion first raising a procedural issue and argue that under Court of Common Pleas Rule 12(c) the motion for judgment on the pleadings is not proper because the Rule provides that such motion may only be made “after the pleadings are closed.” Therefore, plaintiffs argue that since Hobdell has not answered plaintiffs’ complaint, the pleading is not yet closed, and the Court should hear the motion.

A motion brought under Court of Common Pleas Civil Rule 12(c) for judgment on the pleadings, admits for purposes of the motion that the allegations of the opposing party is true but contends that the allegations are insufficient at law for the relief claimed. Therefore, such motion cannot be granted by the Court where the pleadings raise issues of material fact or there are any conceivable bases for which the plaintiffs may recover. *Clever v. Roberts*, Del. Supr., 203 A.2d (1964). Additionally, for purposes of a motion brought under this rule, all allegations in the complaint must be accepted as true. The *State-Use-Of Tweed-Product Corporation v. Pacific Insurance Co.*, Del. Super., 389 A.2d 777 (1978).

In the complaint, it alleges that the plaintiff may recover on the basis of fraudulent misrepresentation in that the seller was aware of the plumbing defect in the house and failed to disclose it at the time of settlement. Plaintiff in this allegation relies upon in part the Sellers Property Condition Report which was signed by the seller on February 7, 2004. In that report, the Seller checked “No” to the question: “Are there any leaks, backups, or other problems relating to any of the plumbing, water and sewage related items?” Plaintiff alleges that because defendant was aware of a backup problem, by

checking “No” on the disclosure report, it was fraudulent concealment and negligent misrepresentation. Defendant argues in its motion for dismissal that plaintiff’s father, who was her agent, conducted an inspection of the property; therefore, she would have been on notice regarding this problem because he observed the water in the basement area. Whether the plaintiff’s father was an agent of plaintiff is disputed in her response to the motion. This raises an issue of material fact, which must be decided at trial.

The defendant also moves the claims based fraud arguing that under Court of Common Pleas Civil Rule 9 provides that with respect to the allegation of fraud, the defendants are required to plead such allegations with specific facts. In this argument, defendant asserts he alleges that under *Mia v. Adams*, Del. Super. A.2d 313 (1961) the elements of a claim of fraud are: 1) false representation made by defendant; 2) with the intent to induce plaintiff to act or refrain from acting; 3) justifiable reliance by plaintiff; and 4) damages. Defendant then goes on to argue that the complaint failed to satisfy these requirements because it does not specifically allege each of the elements set forth above.

A review of the complaint alleges that defendant was aware of the plumbing problem because he placed a “do not use” sign on the powder room on the first floor; that he was aware of water in the basement and that he in fact said to plaintiff’s father that there was no problem. Therefore, plaintiff concludes that he was reasonably aware of these problems and that she did not do further inspection because of his representation in the property disclosure condition report. She further alleges that she in fact suffered damages in the amount of \$5,518 to fix the drainage problem.

Based on a review of the complaint, I find that plaintiff has put forth sufficient allegation to charge the allegation of fraud that there are material facts for which the defendant is aware of what she is alleging, the factual basis for and allegation, and the actions of the defendant which she claims constitute fraud and her reliance thereon.

Accordingly, defendant's motion for judgment on the pleadings is hereby Denied.

SO ORDERED this __ day of September, 2005

Alex J. Smalls
Chief Judge

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